




11/11 1/641
DOCKET NO: ISA-064.01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Badley, et al.
Serial No:	09/920,306
Filed:	August 2, 2001
For:	Peptides Capable of Functioning as Mimotypes for Hormonal Analytes
Examiner:	David J. Venci
Art Unit:	1641

CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that this "Response" is being deposited with the United States Postal Service as First Class Mail, in an envelope addressed to: Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on October 11, 2006.


Katelyn Nelson

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NONCOMPLIANCE

This communication is a response to the Notice of Noncompliance in the above-identified application, mailed August 11, 2006. A Petition for a One-Month Extension of Time is enclosed herewith. Applicants hereby authorize the Commissioner to charge the any required fee to Deposit Account Number **06-1448, Reference ISA-064.01.**

The Examiner has reiterated that one peptide sequence from claims 3, 5, and 6 must be elected under 35 U.S.C. § 121. Applicants' grounds for traversal are set forth below.

It is Applicants' position that while a species election may be proper among the various peptides for prosecution on the merits to which the claims shall be restricted if no

generic claim is finally held to be allowable, an election under 35 U.S.C. §121 is improper since the claims are linked by a generic linking claim (see M.P.E.P. §809.02). The Examiner's restriction improperly limits a clearly described chemical genus, the base structure and substituents of which are readily ascertained by one of skill in the art, based on the claim and supporting definitions and description in the specification. Such generic structures are commonly examined in the chemical arts. At the very most, applicants should be restricted to a single species *for search purposes only*.

If a species election is required, Applicants further provisionally elect Applicants provisionally elect **Xaa-Glu-Asp from claim 6, with traverse and for search purposes only**. It is Applicants' understanding that the search will be extended to the remaining species upon a finding of allowability. Applicants request that the Examiner reconsider and remove this second restriction requirement among the various peptide species.

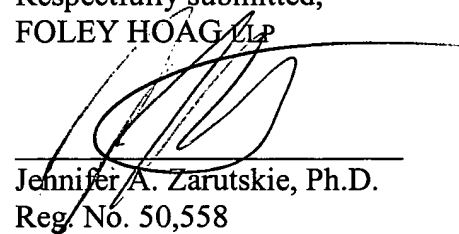
Applicants hereby reserve the right to petition the Commissioner to review the restriction requirement if this restriction requirement is made final.

The Notice further indicates that the application fails to comply with the requirements of 37 CFR §§ 1.821 - 1.825 because sequence identifiers are missing from claim 6. Applicants urge that sequence identifiers are unnecessary because 37 CFR § 1.821 states that sequence listings are required only where "an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides" is present. The sequences in claim 6 do not meet this requirement, and thus no sequence identifier is necessary in claim 6.

Serial No. 09/920.306

If a telephone conversation with Applicant's Attorney would expedite prosecution of the application, the Examiner is urged to contact Applicant's Attorney.

Respectfully submitted,
FOLEY HOAG LLP



Jennifer A. Zarutskie, Ph.D.
Reg. No. 50,558
Attorney for Applicants

Customer No: 25181
Patent Group
Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210-2600
Tel. (617) 832-1000
Fax. (617) 832-7000

Dated: October 11, 2006